



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2016-0887]

RIN 1625-AA08

Special Local Regulation; Arkansas River; Little Rock, AR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation controlling movement of vessels for certain waters of the Arkansas River. This rule is necessary to provide for the safety of life on navigable waters during a rowing regatta on October 14 and 15, 2016. This regulation prohibits entry by all vessels, mariners, and persons into the event area, a 1.2 mile stretch of the Arkansas River extending 25-yards from the left descending bank. All vessels transiting the regulated area outside of the 25-yard zone will be limited to slowest speed for safe navigation to minimize wake unless specifically authorized by the Captain of the Port Memphis.

DATES: This rule is effective from 7 a.m. on October 14, 2016 until 7 p.m. on October 15, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0887 in the “SEARCH” box

and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule,

call or email Petty Officer Todd Manow, Waterways Management, Sector Lower

Mississippi River, U.S. Coast Guard, telephone 901-521-4813, email

Todd.M.Manow@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| COTP | Captain of the Port |
| DHS | Department of Homeland Security |
| E.O. | Executive Order |
| FR | Federal Register |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| U.S.C. | United States Code |

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. While the Arkansas Boathouse Club notified the Coast Guard that it will be conducting a rowing regatta, the “Six Bridges Regatta”, from 7 a.m. until 7 p.m. on October 14 and 15, 2016, the final details of this event were not made

known to the Coast Guard until early September, leaving an insufficient amount of time remaining to publish an NPRM. It is impracticable to publish an NPRM because we must establish this safety zone by October 14, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable.

III. Legal Authority and Need for a Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The COTP has determined that potential hazards posed to participants of a rowing regatta in this section of river would be a safety concern for anyone transiting the river from mile marker 117.4 to 118.6. The purpose of this rulemaking is to ensure the safety of event participants and other waterway users in U.S. navigable waters from mile marker 117.4 to 118.6 before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a special local regulation, enforced from 7 a.m. until 7 p.m. each day on October 14 and 15, 2016. In light of the aforementioned hazards, the COTP has determined that a special local regulation is necessary to protect spectators, vessels, and participants. The special local regulation will encompass the following waterway: all waters of the Arkansas River between mile markers 117.4 and 118.6 in the vicinity of Little Rock, AR.

This regulation prohibits entry by all vessels, mariners, and persons into the event

area, a 1.2 mile stretch of the Arkansas River extending 25-yards from the left descending bank. All vessels transiting the regulated area outside of the 25-yard zone will be limited to slowest speed for safe navigation to minimize wake unless specifically authorized by the Captain of the Port Memphis.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The Coast Guard's use of this special local regulation will be only 12 hours in duration each day on a Friday and a Saturday, and it is designed to minimize the impact on navigation. Moreover, vessels will be allowed to transit the marked navigation channel outside the 25 yards from left descending bank from mile marker 117.4 to mile marker 118.6 at the slowest speed for safe navigation to minimize wake unless specifically authorized by the Captain of the Port Memphis. Overall, the Coast Guard

expects minimal impact to vessel movement from the enforcement of this special local regulation.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in this portion of the Arkansas River in the vicinity of Little Rock, AR between 7 a.m. on October 14, 2016 and 7 p.m. on October 15, 2016.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a special local regulation lasting 12 hours each day over the course of a Friday and Saturday. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100-- SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.35T08-0887 to read as follows:

§ 100.35T08-0887 Special Local Regulation; Arkansas River, Little Rock, AR.

(a) **Regulated area.** (1) A regulated area is established to encompass the following waterway: all waters of the Arkansas River mile 117.4 through mile 118.6.

(2) All vessels are prohibited from entering the event area which extends out 25-yards from the left descending bank within the regulated area. All vessels transiting the regulated area outside of 25 yards from the left descending bank zone are limited to slowest speed for safe navigation to minimize wake unless specifically authorized by the COTP.

(b) **Effective period.** This section is effective from 7 a.m. on October 14, 2016 until 7 p.m. on October 15, 2016 and will be enforced each day from 7 a.m. until 7 p.m.

(c) **Regulations.** (1) In accordance with the general regulations in § 100.801 of this part, all vessels, mariners, and persons are prohibited from entering the event area, without permission of the Captain of the Port Memphis (COTP). All vessel operators desiring to operate in the event area of this special local regulation must contact the COTP or a designated representative to request permission to do so. The COTP or a designated representative may be contacted via VHF Channel 16 or by telephone at 1-

866-777-2784.

(2) During enforcement, all vessels transiting the marked navigation channel from mile marker 117.4 to mile marker 118.6 will be limited to slowest speed for safe navigation to minimize wake unless specifically authorized by the COTP.

(d) Informational broadcasts. The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the regulated area as well as any changes in the dates and times of enforcement.

Dated: September 27, 2016

T. J. WENDT
Captain, U.S. Coast Guard
Captain of the Port
Memphis, Tennessee
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